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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, ) Case No.: 2:13-cr-346-APG-GWF  
Plaintiff, )  
vs. )  
KELLY CARN, )  
Defendant. )  
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**UNITED STATES' RESPONSE TO**  
**MOTION FOR RETURN OF**  
**PROPERTY (Doc. 46)**

The United States, by and through its counsel, Daniel G. Bogden, United States Attorney for the District of Nevada, and Andrew W. Duncan, Assistant United States Attorney, submits this Response to George Demetrius Karalis' Motion for Return of Property (Doc. 46).

## **STATEMENT OF FACTS**

On June 3, 2014, the defendant, Kelly Carn was indicted and charged with fifteen firearms related crimes. The charges included Unlawful Receipt and Possession in violation of 26 U.S.C. Sections 5812, 5861(b), 5871, Making a False Entry in violation of 26 U.S.C. Sections 5848(b), 5861(l), 5871, and Unlawful Possession of a Machine Gun in violation of

1 26 U.S.C. Sections 5841, 5861(d), and 5871. The charges resulted in part from evidence  
2 seized during a search of the defendant's business, The Gun Vault, Inc., and his residence.  
3 Numerous firearms and paperwork were seized during the execution of the warrants. Several  
4 of these firearms were allegedly contracted for sale and paid for by George Demetrius  
5 Karalis. Karalis alleges that he paid Carn \$99,180 for eight firearms. Karalis is litigating a  
6 civil case, *Karalis v. Carn*, 2:12-cv-694-APG-GWF, in the District of Nevada, which  
7 involves the same firearms as the present Motion. The government believes it possesses three  
8 of the firearms allegedly paid for, but not received by Karalis:

- 9 1) an SWD Model M11/9, 9mm machine gun S/N 86-0014860;
- 10 2) a Military Armament Crop, Model MAC 10, .45 caliber machine gun, S/N 1-  
11 3003109; and
- 12 3) a SWD Model M11A1, .380 caliber machine gun, S/N 85-3800801.

13 Additionally, there is at least one firearm listed on a bill of sale that matches a firearm  
14 in the government's possession. Additionally, the three firearms listed above are evidence in  
15 two state court cases against Carn.

16 None of the firearms seized by the government were ever physically transferred to  
17 Karalis. Additionally, the firearms were never approved by ATF for Karalis' possession, as is  
18 required under the National Firearms Act. The firearms remain registered to the Gun Vault,  
19 Carn's corporation, or to an unrelated third party. Thus, Karalis is not the registered owner of  
20 any of the firearms.

21 In his motion, Karalis seeks return of the firearms, or in the alternative, requests that  
22 the firearms remain in government custody until the criminal case and civil case are  
23 concluded. The government objects to the return of the firearms at this stage of the  
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1 proceedings, but does not oppose keeping the firearms in government custody until the  
2 conclusion of the civil and criminal cases.

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#### 4 POINTS AND AUTHORITIES

5 Rule 41(g) of the Federal Rules of Criminal Procedure provides in pertinent part that  
6 “[a] person aggrieved by an unlawful search and seizure or by the deprivation of property  
7 may move the district court for the district in which the property was seized for the return of  
8 the property on the ground that such person is entitled to lawful possession of the property.  
9 The court shall receive evidence on any issue of fact necessary to the decision of the  
10 motion.” Fed.R.Crim.P. 41(g). When it is apparent that the person seeking a return of the  
11 property is not lawfully entitled to own or possess the property, the district court need not  
12 hold an evidentiary hearing. *United States v. Felici*, 208 F.3d 667 (8<sup>th</sup> Cir. 2000) (citation  
13 omitted).

14 Factors considered by a district court in determining whether it may exercise  
15 equitable jurisdiction to hear a motion for return of seized property are: (1) whether the  
16 government displayed a callous disregard for the constitutional rights of the movant; (2)  
17 whether the movant has an individual interest in and need for the property he wants returned;  
18 (3) whether the movant would be irreparably injured by denying return of the property; and  
19 (4) whether the movant has an adequate remedy at law for the redress of his grievance.  
20 *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1174 (9<sup>th</sup> Cir. 2010).

21 In the present case, Karalis is not permitted by law to possess the requested firearms  
22 under the National Firearms Act. *See* 26 U.S.C. Section 5801 et. seq. The firearms are not  
23 registered to him and an ATF Form Four was not processed to approve Karalis’ possession.  
24 Thus, ownership of the firearms never passed to Karalis. While the government sympathizes

1 with Karalis' and his monetary loss, the proper venue to argue this monetary loss is in civil  
2 court. If Carn victimized Karalis through a scheme to take his money and not deliver the  
3 firearms, the remedy is for Carn to repay Karalis the money he took for the firearms he never  
4 delivered. Karalis has actively litigated a civil lawsuit and it is the government's contention,  
5 in concurrence with Defendant Carn, that this court should defer to the civil case.

6 The government also submits that the three firearms possessed by the government  
7 have evidentiary value and thus should not be returned. *See United States v. Mills*, 991 F.2d  
8 609, 612 (9th Cir.1993) (holding that when the government's need for the property as  
9 evidence continues, a motion for return of property is properly denied). Carn has been  
10 charged in state court with crimes directly related to the firearms. The government has  
11 confirmed with the Clark County District Attorney's Office that these firearms are potential  
12 evidence in its criminal cases, captioned at C-12-284671-1, and C-11-278528-1.

13 As an alternative remedy, Karalis argues that the government should maintain  
14 possession of the firearms until the completion of the criminal and civil cases. The  
15 government submits that this remedy protects the government's evidence, protects Karalis'  
16 interest in the firearms, and ensures that Karalis will not be irreparably harmed by return of  
17 the property. Accordingly, the government joins Karalis in requesting this alternative  
18 remedy.

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## CONCLUSION

The government opposes Karalis' Motion for Return of Property to the extent it would require the return of firearms in its possession. However, the government does not oppose maintaining this property in its possession through the conclusion of the civil and criminal cases discussed above.

Dated: January 26, 2015.

Respectfully submitted,

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United States Attorney

/s/ Andrew W. Duncan  
ANDREW W. DUNCAN  
Assistant United States Attorney